

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 08 CV 1490-AKH

)
DREW SCIENTIFIC, INC.,)
Plaintiff)
vs.)
POINTCARE TECHNOLOGIES, INC.,)
Defendants.)
)

**AFFIDAVIT OF ANDREA DESROSIERS IN OPPOSITION TO DREW'S
MOTION FOR PRELIMINARY INJUNCTION**

I, Andrea Desrosiers, declare:

1. I am the software manager for PointCare Technologies, Inc. ("PointCare"). I graduated from the University of Chicago in 1989 with a B.S. degree in chemistry and Boston University in 1998 with an M.A. in physical chemistry. I was hired by PointCare in December 2003. I make this affidavit on personal knowledge, except where specifically stated. I provide this affidavit in opposition to Drew Scientific, Inc. ("Drew")'s Motion for Preliminary Injunction.

2. I was PointCare's software manager during the development of the HT instrument with Drew. My responsibilities included supervision of two software engineers, Jennifer Waite and Dorothy Branco.

3. In its brief at p. 10, Drew accuses PointCare of failing to develop rudimentary software for the HT and implies that this purported failure somehow prevented Drew from developing the HT engineering prototype it was required to develop. This is patently false. The rudimentary software needed for the HT engineering prototype was the instrument control and service software. The instrument control software controls the device hardware. You cannot run

the hardware without it. The service software allows you to operate the instrument. You cannot operate the instrument without it. Drew was responsible for developing the instrument control and service software for the HT engineering prototype. Drew first needed to complete the instrument control and service software to develop the HT engineering prototype.

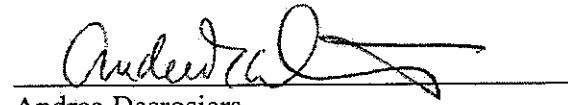
4. The software PointCare was responsible for (the user interface and the CD4 algorithm/analytical software) was not needed for development of the HT engineering prototype. Any software-related delay in the development of the HT engineering prototype was caused by Drew's failure to timely and effectively develop the "rudimentary" software it was responsible for.

5. With respect to PointCare's obligations to develop the user interface software and the CD4 algorithm, PointCare effectively completed these in a timely manner. Any delay or inability to complete development of PointCare's software development tasks was attributable to Drew's failure to complete its hardware and software tasks which were necessary prerequisites to completing PointCare's tasks. I am not aware of any failure by PointCare's HT software team that would have hindered Drew's HT prototype development.

6. Throughout the course of the HT project, PointCare's software team worked diligently in a cooperative and collaborative spirit to complete the software development tasks corresponding to PointCare and to assist Drew with the software development tasks corresponding to Drew. I personally was always available to assist my own software team members as well as Drew's in an effort to advance the HT software development. Drew did not always reciprocate. As an example, in July 2006, after meeting with Mr. Gu at PointCare and learning from him that he wanted to create a "dll" (dynamic link library) wrapper for PointCare's CD4 algorithm, I delivered to him in person a CD containing the source code for PointCare's

CD4 algorithm. I did this as a show of good faith and to make it easier for him to create the dll. Mr. Gu e-mailed me a preliminary dll several months later which did not even contain PointCare's algorithm. He later refused to finish the dll or even help PointCare finish it (despite previously committing to lead the effort). As PointCare attempted to complete the dll, Mr. Gu became unavailable to help and refused to provide PointCare with the Drew source code for the instrument control and service software. This lack of cooperation made the task more difficult than it otherwise would have been and led to delay in the software development.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 25th day of April, 2008, in Marlborough, Massachusetts.



Andrea Desrosiers

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